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version,
see PSA #36 feb*

DOCUMENT NO. 5249
ADOPTED
11/30/89

RESOLUTIONS OF THE BOSTON REDEVELOPMENT AUTHORITY
REGARDING OLMSTED PLAZA DEVELOPMENT PLAN AND
DEVELOPMENT IMPACT PROJECT PLAN

1. THE ONGOING BRA APPROVAL PROCESS

WHEREAS, Olmsted Plaza Associates (the "Applicant") filed an Application dated October 24, 1989, as supplemented November 9, 1989, (the "Application") seeking from the Boston Redevelopment Authority (the "BRA") and the Boston Zoning Commission (the "Commission") approval of a development plan (the "Development Plan") and a development impact project plan (the "Development Impact Project Plan") (together, the "Development/DIP Plan") for a planned development area to be designated in the area in Boston bounded by Park Drive, Brookline Avenue, Fullerton Street and an MBTA right-of-way (the "Site") in connection with a proposed mixed-use development. The Applicant is a Massachusetts general partnership consisting of JMB/Olmsted Limited Partnership, an Illinois limited partnership, and Macomber Olmsted Plaza Associates Limited Partnership, a Massachusetts limited partnership, its successors and assigns.

A development plan establishes limits of development permitted in a project area and ensures the provision of certain public amenities. Pursuant to Section 3-1A.a of the Boston Zoning Code (the "Code"), a development plan must "set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the area, densities, proposed traffic circulation, parking and loading facilities, access to public transportation, [and] proposed dimensions of structures" (collectively, the "Development Plan Criteria").

Similarly, Sections 26A-3 and 26B-3 of the Code establish requirements for a development impact project, and Sections 26A-2.2 and 26B-2.2 require that a development impact project plan contain the same information as a development plan. In addition thereto, a development impact project plan must also set forth the projected number of employees.

The Development/DIP Plan submitted by the Applicant on November 9, 1989, as revised November 16, 1989 and November 30, 1989, represents a crucial stage in the planning process for the Project (as hereinafter defined). Without BRA approval of the Development/DIP Plan, the Applicant cannot proceed to the final stage at which the final plans and specifications are submitted to the BRA for final development review approval and certification as to consistency with the Development Plan. If the BRA determines that the Development/DIP Plan meets the Development Plan Criteria and that it "conforms to the general plan for the city as a whole and that nothing in such plan will be injurious to the neighborhood or otherwise detrimental to the public welfare," the

BRA may, after public hearing, approve the Development Plan. Section 26A-3 of the Code similarly provides that no Development Impact Project Plan may be approved by the BRA without making the same determinations as required for the Development Plan.

As noted above, even after the Development/DIP Plan is approved, the BRA review process will continue. All drawings and specifications will be subject to development review and approval by the BRA. In addition, in order to obtain a building permit, all final plans and specifications must be submitted to the BRA for a determination that they are consistent with the Development/DIP Plan. If the final plans and specifications are not consistent with the Development/DIP Plan, they cannot be approved unless the Development/DIP Plan is amended, after public notice and hearing.

2. THE PRESENT SITE IS SIGNIFICANTLY UNDERUTILIZED AND UNDERDEVELOPED

WHEREAS, the Site is located in the Fenway section of Boston and is bounded by Park Drive, Brookline Avenue, Fullerton Street and an MBTA right-of-way. The Site contains approximately 8.9 acres. (A more precise description of the Site is contained in the Development/DIP Plan.) At present, the existing Sears building located on the Site (the "Sears Building") is not in use. In addition the remainder of the Site is underdeveloped. Consequently, the Site returns little to the City in terms of tax revenue, and nothing in terms of employment or other public benefits.

The BRA finds that, if the Development/DIP Plan is not approved, the Site will continue as an underutilized area; and that the existing character of the Site will remain essentially unchanged; and the potential public benefits from the Site will not be fully realized.

3. THE APPLICANT'S DEVELOPMENT/DIP PLAN

WHEREAS, the Applicant's Development/DIP Plan consists of 7 pages of text plus attachments designated Exhibits A through H. The Applicant has also submitted the Application, which includes Exhibits A and B. In addition, the Applicant has submitted proposed forms of a Development Impact Project Agreement and a Cooperation Agreement (collectively, the "BRA Agreements"). After reviewing these forms of agreements, the BRA is satisfied that the BRA Agreements will ensure compliance with the Development/DIP Plan and the provision of the public benefits and mitigation measures referred to herein and, with such changes as may be made thereto by the Director of the BRA, the Director of the BRA will execute the BRA Agreements in a timely manner.

The BRA finds that the Applicant's Development/DIP Plan adequately sets forth the required elements or Development Plan Criteria of Sections 3-1A.a and 26A-2.2 and 26B-2.2 of the Code, including the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the Site, densities, proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions of structures and projected number of employees.

4. THE PROJECT

WHEREAS, the Project contemplates a mixed use development planned to include primarily office, research and development, clinical, and retail uses, a parking garage and possible hotel uses. The Project will consist of four major buildings: the renovated Sears Building, a new building along Park Drive on the western corner of the Site (the "Park Drive Building"), a new building at the corner of Brookline Avenue and Fullerton Street (the "Brookline Avenue Building") and a new parking garage (the "Garage"). The Site will be enhanced by extensive landscaping and an improved pedestrian access and circulation system. The Park Drive Building will not exceed 120 feet in height or 223,000 square feet of gross floor area. The Brookline Avenue Building will not exceed 175 feet in height or 316,000 square feet of gross floor area. The Garage will not exceed 85 feet in height or 390,000 square feet of gross floor area. After renovation, the Sears Building will not exceed 200 feet in height or 907,000 square feet of gross floor area.

The BRA finds that the development of the Site is critically important to the revitalization of the Fenway area. The BRA further finds that, by maximizing the use of the presently underutilized Site, the Project will tie together the abutting neighborhoods and serve the diverse needs of the City and the distinctly different neighborhoods that surround the Site.

The BRA finds that, from a design standpoint, the Project is in harmony with the design philosophy of the Fenway area, that massing and setbacks are coordinated to relate to those of the surrounding neighborhoods and area, and that the buildings in the Project will have heights and gross floor areas not in excess of those permitted in the Development/DIP Plan.

5. THE PUBLIC REVIEW PROCESS AND EVOLUTION OF THE PROJECT

WHEREAS, the public has been included throughout the review process for the Project. Moreover, the Project has changed in response to the concerns voiced during the public review process. The proposed design is the result of a long and thorough review process. For example, through its evolution, the design and massing of the Project have been refined and reduced in scale. As originally proposed, a two-story roof addition was to be

constructed atop the base of the Sears Building. In addition, as originally proposed the Brookline Avenue Building was to be sixteen stories in height, the Park Drive Building was to be twelve stories in height and the Garage was to be eight stories in height. To reduce massing, the proposed addition to the Sears Building has been discarded, the Brookline Avenue Building has been reduced to thirteen stories, the Park Drive Building has been reduced to nine stories and the Garage has been reduced to six stories. The resulting design represents a commitment on the part of the Applicant to preserve open air and pedestrian and vehicular access. In addition, throughout the review process, the Project has evolved to include the provision of substantial community benefits as set forth in Resolution No. 7 below.

As part of the public review process, a Project Notification Form was filed on June 28, 1989 with the BRA and a combined Draft Project Impact Report and Draft Environmental Impact Report (the "DPIR/DEIR") was filed on September 29, 1989 with the BRA. An Environmental Notification Form was filed on March 15, 1989 with the Massachusetts Executive Office of Environmental Affairs ("the EOEA") and the DPIR/DEIR was filed on September 29, 1989 with the EOEA.

The BRA finds that as a result of the process of citizen involvement and public review, numerous changes have been made in the Project, demonstrating the Applicant's sensitivity to design, aesthetics, community concerns, environmental impacts and scale. The BRA further finds that, out of this public review, through the diligent and good faith cooperation of the Applicant, a better Project has evolved representing a culmination of the combined needs of the City, Boston businesses and the community at large.

6. THE PROJECT CONFORMS TO THE "GENERAL PLAN FOR THE CITY AS A WHOLE"

WHEREAS, in approving a development plan or a development impact project plan, the BRA must find "that such plan conforms to the general plan for the City as a whole." No specific "general plan" is referred to in Section 3-1A or 26A-3 or 26B-3 or elsewhere in the Code.

On March 11, 1965, the BRA adopted as the official master plan of the City for the next decade the "1965/1975 General Plan for the City of Boston and the Regional Core" (the "1965-1975 Plan"). In the intervening 22 years, no other formal City-wide plan has been adopted, although other plans and studies have been conducted, including the BRA study entitled "Planning for Boston's Next Decade of Development 1980-90." Neither the 1965-1975 Plan, nor any other single document frozen in time, has constituted "the general plan" for the City. Rather, "the general plan for the City as a whole" has been a continually evolving concept,

evidenced by development precedents and existing zoning ordinances.

The BRA finds that, by turning an underutilized site in the Fenway into a mixed-use development, the Project will convert an underdeveloped site into a physical and financial asset, and will provide economic stimulus to the neighborhoods and the larger community. The BRA further finds that by using materials and designs which are harmonious with the surrounding neighborhoods, the Project will strengthen the Fenway area without compromising the historic and architectural integrity of the area. The BRA further finds that, in spite of the passage of twenty-two years and Boston's greatly changed condition, the Project, as set forth in the Development/DIP Plan, is consistent with the development concepts contained in the 1965-1975 Plan.

7. THE PROJECT IS NOT "INJURIOUS TO THE NEIGHBORHOOD OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE"

WHEREAS, in order to approve the Development/DIP Plan, the BRA must find that "nothing in [a proposed Planned Development Area plan] will be injurious to the neighborhood or otherwise detrimental to the public welfare" pursuant to Section 3-1A.a of the Code. This standard has been interpreted by the Supreme Judicial Court in Manning v. Boston Redevelopment Authority, 400 Mass. 444 (1987). As the court noted, the planned development area provisions of the Code were intended to "establish a more flexible zoning law" in order to encourage well-planned and thoroughly reviewed large scale private development projects on underutilized sites. These provisions contemplate a balancing of relative benefits and burdens, acknowledging that such large scale development projects inevitably cause some burdens, but realizing that in a well-conceived and well-designed project such burdens are outweighed by public benefits generated by the Project.

Based upon its consistent administrative practice for nearly two decades, as well as upon the mandate of Manning, the BRA will balance a proposed plan's possible adverse effects and other matters claimed to be detrimental to the public welfare against the benefits to the neighborhood, the City, and the public. It will approve only those plans which "on balance, are not injurious to the neighborhood or otherwise detrimental to the public welfare, weighing all the benefits and burdens."

With respect to this Project, the balance is tipped heavily in favor of benefits to the neighborhood, the City and the public. As an integral part of the development review process, significant revisions have been made to the Project's design in order to mitigate adverse environmental and other impacts. For example, the proposed two-story addition to the Sears Building was discarded and, to reduce massing, the height of the proposed Brookline Avenue Building was reduced from sixteen stories to

thirteen stories, the height of the proposed Park Drive building was reduced from twelve stories to nine stories and the height of the proposed Garage was reduced from eight stories to six stories. In addition, through the public review process, the Applicant has included in the Project substantial community benefits designed to minimize any potential adverse impacts of the Project. These examples demonstrate a significant amount of mitigation included in the current Project design, which has resulted in a limited potential for negative impacts.

The Project does, however, provide numerous positive impacts. Set forth below are some of the benefits which will inure to the public as a result of the Project.

Public Benefits

A. Emerald Necklace Parcel

The Applicant shall cause title to the property currently owned by Sears and bounded by Park Drive, The Fenway, Brookline Avenue and By Pass Road (the "Emerald Necklace Parcel"), to be conveyed by Sears, Roebuck and Company ("Sears") directly to the City of Boston by no later than thirty days after the Park Completion Date (as defined hereinafter). The Authority agrees that either (i) the City of Boston will accept the conveyance of the Emerald Necklace Parcel, or (ii) the Authority will designate, prior to the date of acquisition of the Site by the Applicant and subject to the reasonable approval of the Applicant, a nonprofit organization, or an entity under the control of or established by the City or the Authority, which will accept the conveyance of the Emerald Necklace parcel, in which case the Applicant shall cause the Emerald Necklace parcel to be conveyed directly to such party. Subject to obtaining required zoning relief and other permits, the Authority agrees that the Emerald Necklace Parcel will thereafter be operated as a parking lot by an independent parking lot operator for a period of no more than two years, with the net income generated thereby, together with all interest earned thereon, to be devoted to construction of a public park estimated to cost \$1,000,000 (the "Park") on the Emerald Necklace Parcel in a manner to be approved by the Authority and the Applicant. The Authority shall cause the City to appoint an Advisory Committee to oversee planning for and design of development of the Park, such Advisory Committee to consist of representatives of the City, the Authority, the Developer, abutters to the Emerald Necklace Parcel, the Fenway community and open space advocacy groups.

Subject to obtaining necessary permits and approvals, the Applicant agrees to construct, or cause the construction of the Park. The Park shall be completed no later than July 1, 1992, subject to extensions for delays caused by circumstances beyond the reasonable control of the Applicant (as so extended, the "Park Completion Date"). No building permit shall be issued for any

portion of the Project after the Park Completion Date until completion of the Park. The Applicant will contribute the following amounts for development of the Park: (a) \$100,000 to be used solely to facilitate planning for and design of the Park and to be payable on or before January 31, 1990; (b) \$300,000 to be used solely for construction of the Park and to be payable on a dollar for dollar matching fund basis as funds from other sources are contributed to the Authority, or to such other party designated by the Authority, to be used solely for construction of the Park. In the event that the cost of construction of the Park exceeds \$1,000,000, the Applicant agrees to work with other sources and undertake good faith efforts to procure the additional sums required to complete the Park, but shall not be required to complete construction of any portion of the Park costing in excess of \$1,000,000 unless such additional sums required are procured.

Standard maintenance of the Park will be provided by the City of Boston Parks and Recreation Department. The Applicant agrees to provide additional maintenance services for the Park for a period commencing thirty days after notice from the Authority to the Applicant that construction of the Park is substantially complete and terminating on the earlier of fifty years thereafter or July 1, 2042. Maintenance services shall include and shall be limited to the following:

- (a) Sweep paths and under benches daily, wash hard surfaces with hose twice monthly.
- (b) Remove litter throughout the Park a minimum of once daily, or as needed to be completely litter free.
- (c) Provide appropriate professional horticultural attention to special plantings of perennials and/or deciduous shrubs. Such attention may include but is not limited to: bed cultivation, plant feeding, weeding, watering as needed, thinning, and mulching.
- (d) Turf irrigation by field hydrant as needed.
- (e) Trees shall be pruned and fed on an annual basis under the supervision of a certified arborist until they have grown to sufficient size to warrant a longer pruning/feeding cycle as determined by the City of Boston Parks and Recreation Department.
- (f) Park furniture shall be repainted, cleaned, or refurbished on an annual basis, as needed.
- (g) Water fountain, if any, shall be kept in good working order from April 30 to October 31.

- (h) Irrigation system, anticipated to be a field hydrant, shall have water turned off for winter.

B. Employment Plan

It is anticipated that the Project will generate approximately 1,700 construction jobs and provide approximately 4,200 permanent jobs. In addition, the Applicant has commissioned a report from a labor market economist to assess the needs of the unemployed and underemployed residents of the Fenway area. The economist is working with area institutions and medical facilities in the Longwood Medical Area to identify occupations experiencing labor shortages. The report will conclude with a series of recommendations as to how those in need of work, through skills training and improved referral mechanisms, can improve their chances of obtaining jobs.

In addition, the Applicant will work with the Mayor's Office of Jobs and Community Services to make employment and training opportunities available to both Fenway employers and residents. The primary focus of this program will be on jobs available in the biomedical research field and on specific job categories presently unfilled in the educational and medical institutions located in the Fenway area. To this end, the Applicant will set aside not less than 2,000 square feet of indoor space in the Project for a job training, counseling and referral center to support training programs for the medical and biomedical research industries (the "Job Center"). The Applicant will secure the initial operators of the Job Center. The Applicant shall make available, or cause to be made available, the facilities to include the fixtures, furnishings and equipment required for the operation of the Job Center.

C. Increased Tax Revenues

It is anticipated that the Project will make significant economic contributions to the City by generating additional property tax revenues.

D. Development Impact Project Contribution

It is presently estimated that pursuant to Article 26A of the Code, the Applicant will contribute approximately \$6,730,000 in housing linkage payments or cause the creation of low and moderate income housing of an equivalent value. It is also anticipated that, pursuant to Article 26B of the Code, the Applicant will make jobs linkage contributions totalling approximately \$1,346,000.

E. Child Day Care Plan

The Applicant will set aside in the Project no less than 8,000 square feet of indoor space on a rent-free basis, for a child day care center for at least one hundred children to serve the needs of working parents employed at the Project ("Child Care Center"). The Applicant will secure the initial operators of the Child Care Center. The Applicant shall make available, or cause to be made available, the initial facilities to include the fixtures, furnishings and equipment required for the operation of the Child Care Center. The Applicant will work with the BRA on a Child Care Provision Agreement to be agreed upon and executed by the Applicant and the Boston Women's Commission, which plan shall set forth the proposed child care program and program design, the proposed child care population to be served by the Child Care Center and the proposed delivery date of such Child Care Center. Children of working parents from the Fenway area will be given priority placement in the Child Care Center. During the period prior to initial occupancy by tenants of the Project, the Applicant shall begin to solicit proposals in order to select a provider of child care services to the Project (the "Provider"). All such proposals and the Applicant's recommendations with respect to such proposals shall be made available to the community. The Applicant shall consider the comments and concerns of the community with respect to such proposals, but shall have the right to select the Provider. The quality of child day care services to be provided shall be the Applicant's first priority in selecting the Provider. The Applicant also agrees to make efforts to (a) choose a Provider who will maximize the affordability of child care services; (b) choose a Provider who will establish an after school program for children of parents employed at the Project; and (c) enter into a mutually satisfactory agreement with Wheelock College to provide for a training and employment program for child care providers, subject to required approvals, and provided that a portion of the jobs linkage funds contributed by the Applicant pursuant to Article 26B of the Code shall be made available for this purpose.

After occupancy by tenants of an area in excess of 25% of the gross floor area of Phase 1, no certificate of occupancy for additional tenant space shall be issued until the Applicant has satisfied its obligations relating to the Child Care Center.

F. Cooperation Agreement

The benefits described above are described in more detail in the Cooperation Agreement to be executed by the Applicant and the BRA.

G. Other Benefits

The Project is of critical importance to the physical and economic revitalization of the Fenway area. By developing the underutilized Site, the Project will enhance the neighborhood and the community at large by providing job opportunities, services and resources.

8. THE PROJECT SATISFIES THE CRITERIA FOR PDA EXCEPTIONS

WHEREAS, in order for the Board of Appeal of the City of Boston to grant certain exceptions with respect to the floor area ratio, setbacks, certain other dimensional features of the Project, uses, and other requirements in accordance with Section 6A-3 of the Code, it must find that (1) each requested exception is "in harmony with the general purpose and intent" of the Code; (2) each requested exception is in conformity with the Development/DIP Plan, and that the BRA has so certified; and (3) the Project complies with the Development Impact Project requirements of the Code.

The BRA finds that, for reasons set forth in the Resolutions numbered 5, 6 and 7 above, and based upon a review of the Applicant's Development/DIP Plan, the Application and the BRA Agreements, the above-stated criteria are satisfied as to each of the exceptions listed in the schedule entitled "Anticipated Zoning Exceptions" attached as Exhibit G to the Development/DIP Plan (the "Zoning Requests"). Pursuant to Section 6A-1 of the Code, such exceptions relate to work in a planned development area of not less than 5 acres and, therefore, shall not lapse and become null and void provided, within two years after the record of the Board of Appeal's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of Chapter 665 of the Acts of 1956, the Authority files with the Building Commissioner a certificate that work within the planned development area has commenced and is diligently proceeding, and provided further that the Authority does not thereafter file with the Building Commissioner a certificate that such work is not diligently proceeding.

9. CONCLUSION

WHEREAS, the BRA gave due and proper notice of a public hearing, to be held in the Board Room of the BRA on November 16, 1989, to consider the Development/DIP Plan and to determine the manner in which Sections 3-1A and 26A-3 and 26B-3 should be applied to the Development/DIP Plan. The public hearing was duly convened and held in all respects in accordance with law, and to the extent required by law, with a legal quorum present throughout the meeting. A legally sufficient number of members of the BRA voted in a proper manner and all other requirements and proceedings under law incident to the proper adoption or the

passage of said vote have been duly fulfilled, carried out and otherwise observed. At the public hearing, the BRA heard extensive testimony from a number of witnesses and closed the public hearing and the public record on this Application on November 30, 1989.

Based on all this evidence, the BRA finds and concludes that the urban design elements of the Project reflect the needs of the Fenway, while respecting the public goals and guidelines established for development in Boston and that the Project will aid the City financially by generating jobs, by providing back office space and by providing Boston with a new source of real estate tax revenues and linkage funds.

Based on all the evidence, the BRA further finds and concludes that the Project's Development/DIP Plan satisfies the Development Plan Criteria and otherwise complies with Section 3-1A and Articles 26A and 26B of the Code.

Based on all the evidence, the BRA further finds and concludes that the Project's Development/DIP Plan "conforms to the general plan for the City as a whole."

Based on all the evidence, the BRA weighs this Project's public benefits against the combined detriments of this Project and further finds and concludes that the Development/DIP Plan is not "injurious to the neighborhood or otherwise detrimental to the public welfare."

Based on all the evidence, the BRA finds that the exceptions listed in the Zoning Requests satisfy all of the criteria of the Code.

10. RESOLVES

NOW THEREFORE be it resolved by the Authority

That in connection with the Development Plan and Development Impact Project Plan for Planned Development Area No. 36 (the "Development/DIP Plan") presented at a public hearing duly held at the offices of the Boston Redevelopment Authority (the "Authority") on Thursday, November 16, 1989, and after consideration of (i) evidence presented at, and in connection with, the hearing, and in connection with the proposed project described in the Development/DIP Plan, (ii) matters discussed in a memorandum dated November 16, 1989, revised November 30, 1989, from the Authority Staff to the Authority and Stephen Coyle, and (iii) the findings of the Authority set forth above, which evidence, memorandum and findings are incorporated herein by reference, the Authority finds that (1) the Development/DIP Plan conforms to the general plan for the city as a whole; (2) nothing in the Development/DIP Plan

will be injurious to the neighborhood or otherwise detrimental to the public welfare; and (3) the Development/DIP Plan does adequately and sufficiently satisfy all other criteria and specifications for a development plan and for a development impact project plan as set forth in the Code; and further

That the form and substance of the Development/DIP Plan, and the procedures employed in reviewing and approving the Development/DIP Plan, conform with the requirements of the Code as applied to a development plan for a planned development area under Section 3-1A of the Code and a development impact project plan under Articles 26A and 26B of the Code; and further

That the Authority hereby waives any procedural requirements of the Authority's "Zoning Procedures for the Master Plan/PDA" dated March 19, 1986 with which the application submitted by the Applicant, for a planned development area subdistrict designation for the parcel of land which is the subject of the Development/DIP Plan, is not in conformity, and for which the review and approval procedures undertaken in connection with such application were not in conformity; and further

That pursuant to the provisions of Section 3-1A and Articles 26A and 26B of the Boston Zoning Code (the "Code"), the Authority hereby approves the Development/DIP Plan. The Development/DIP Plan is embodied in a written document entitled "Development Plan and Development Impact Project Plan for Planned Development Area No. 36", dated November 16, 1989, revised November 30, 1989, consisting of 7 pages of text plus attachments designated Exhibits A through H, and is attached hereto as Exhibit 1. The Development/DIP Plan, shall be on file at the office of the Assistant Director for Neighborhood Planning and Zoning of the Authority; and further

That the Authority hereby authorizes the Director of the Authority to petition the Zoning Commission of the City of Boston (the "Commission") for a planned development area subdistrict designation for the parcel of land which is the subject of the Development/DIP Plan (the "Site"), and to recommend to the Commission that it approve such petition, the Development/DIP Plan pursuant to Section 3-1A of the Code; and further

That the Authority hereby approves the proposed forms of Development Impact Project Agreement and Cooperation Agreement (collectively, the "Related Agreements") in substantially the forms attached hereto as Exhibits 2 and 3, respectively, and the Authority hereby authorizes and directs

the Director of the Authority to execute and deliver in the name of and on behalf of the Authority the Related Agreements, with such changes as he, in his discretion, shall determine to be necessary or desirable, his execution and delivery of any of the foregoing or the taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder. The Related Agreements shall be on file in the office of the Authority; and further

That pursuant to Section 6A-2 of the Code, the Authority hereby authorizes the Director of the Authority to recommend to the Board of Appeal approval of the proposed zoning exceptions set forth in the document entitled "Anticipated Zoning Exceptions" and attached to the Development/DIP Plan as Exhibit G, with such changes as the Director of the Authority, in his discretion, shall determine to be necessary or desirable, his taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder; which approval of such exceptions is recommended by the Authority provided that the Commission will have adopted a Map Amendment designating the land involved as an M-2-D and a B-2-D zoning district. The Authority hereby authorizes the Director of the Authority to certify to the Commission and the Board of Appeal that said exceptions are in conformity with the Development/DIP Plan. Pursuant to Section 6A-1 of the Code, such exceptions relate to work in a planned development area of not less than 5 acres and, therefore, shall not lapse and become null and void provided, within two years after the record of the Board of Appeal's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of Chapter 665 of the Acts of 1956, the Authority files with the Building Commissioner a certificate that work within the planned development area has commenced and is diligently proceeding, and provided further that the Authority does not thereafter file with the Building Commissioner a certificate that such work is not diligently proceeding; and further

That pursuant to Section 7-2 of the Code, the Authority hereby recommends to the Board of Appeal approval of the variances and conditional use permits requested in connection with a petition to be brought by Olmsted Plaza Associates or its nominee for the development by the Applicant of a multi-level parking garage containing approximately 440 to 500 parking spaces on the property on Van Ness Street bounded by Van Ness Street, Yawkey Way, a passageway and land now or formerly of Harvard Community Health Plan, more particularly described in Exhibit 5 attached hereto (the "Van Ness Property"), which the Director of the Authority, in his discretion, shall determine to be necessary or desirable, his taking of any such action to be conclusive evidence of his

determination and of the authority granted to him hereunder; which approval of such variances and conditional use permits is recommended by the Authority.

That the Authority hereby approves the schematic design for the renovation of the existing Sears building on the Site, as such schematic design is set forth in the Schematic Design Submission for the Site dated September 15, 1989 prepared by Notter Finegold + Alexander Inc and submitted to the Authority on October 16, 1989 (the "Schematic Design Submission"). The Authority also approves the height and gross floor area, and the general footprint, envelope and location proposed for the multi-story parking garage (the "Garage") and two additional multi-story buildings to be located along Brookline Avenue (the "Brookline Avenue Building") and Park Drive (the "Park Drive Building"), as set forth in the Olmsted Plaza Design Parameters for the Park Drive Building, the Brookline Avenue Building and the Garage dated November 16, 1989 (the "Design Parameters"), a copy of which is attached hereto as Exhibit 4. The Authority agrees that it will not withhold approval of future design submissions with regard to the Site because of the height, gross floor area, and the general footprint, envelope and location proposed for the Garage, the Brookline Avenue Building and the Park Drive Building so long as the same are consistent with the Design Parameters; and further

That the Authority hereby authorizes and directs the Director of the Authority to execute and deliver in the name of and on behalf of the Authority all agreements and documents incidental to the Development/DIP Plan, including, without limitation, all agreements and documents relating to the development by the Applicant of the Van Ness property, such agreements and documents to be on such terms and conditions as the Director deems appropriate and in the best interests of the Authority, his execution and delivery of such agreements or documents or the taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder. Any such agreements and documents shall be on file in the office of the Authority; and further

That the Authority hereby authorizes the Director to certify in the name of the Authority that the plans to be submitted to the Commissioner of the City of Boston Inspectional Services Department in connection with the Development/DIP Plan are in conformity with the Development/DIP Plan, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder; and further

That, conditioned upon execution of a Transportation Access Plan with the Boston Transportation Department, and a Boston Resident Construction Employment Plan, a Memorandum of Understanding and a First Source Agreement with the Mayor's Office of Jobs and Community Services, the Authority hereby authorizes the Director of the Authority to certify to the Commissioner of the City of Boston Inspectional Services Department that the Project complies with the Development Review Requirements of the Code, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder; and further

That, the Authority hereby authorizes the Director of the Authority to certify to the Building Commissioner pursuant to Section 6A-1 of the Code that work within the planned development area has commenced and is diligently proceeding, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder.

A development plan establishes limits of development permitted in a project area and ensures the provision of certain public facilities. Pursuant to Section 3-15.2 of the Boston Zoning Code (the "Code"), a development plan must "set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the area, facilities, proposed traffic circulation, parking and loading facilities, access to public transportation, and proposed dimensions of structures" collectively, the "Development Plan Criteria".

Similarly, Sections 25A-1 and 25B-1 of the Code establish requirements for a project impact study, and Sections 25A-1.2 and 25B-1.2 require that a development impact study plan contain the same information as a development plan. In addition, therefore, a development impact study plan must set forth the project's impact on the community.

The Development Plan submitted by the Applicant on November 9, 1987, as revised November 15, 1987 and November 30, 1987, represents a critical stage in the planning process for the Project (as hereinafter defined). Without the approval of the Development Plan, the Applicant cannot proceed to the final stage at which the final plans and specifications are submitted to the DMA for final development review approval and certification as to conformity with the Development Plan. If the DMA determines that the Development Plan meets the Development Plan Criteria and that it "conforms to the general plan for the city as a whole and that nothing in such plan will be injurious to the

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DEVELOPMENT IMPACT PROJECT PLAN

1. THE ONGOING BRA APPROVAL PROCESS

WHEREAS, Olmsted Plaza Associates (the "Applicant") filed an Application dated October 24, 1989, as supplemented November 9, 1989, (the "Application") seeking from the Boston Redevelopment Authority (the "BRA") and the Boston Zoning Commission (the "Commission") approval of a development plan (the "Development Plan") and a development impact project plan (the "Development Impact Project Plan") (together, the "Development/DIP Plan") for a planned development area to be designated in the area in Boston bounded by Park Drive, Brookline Avenue, Fullerton Street and an MBTA right-of-way (the "Site") in connection with a proposed mixed-use development. The Applicant is a Massachusetts general partnership consisting of JMB/Olmsted Limited Partnership, an Illinois limited partnership, and Macomber Olmsted Plaza Associates Limited Partnership, a Massachusetts limited partnership, its successors and assigns.

A development plan establishes limits of development permitted in a project area and ensures the provision of certain public amenities. Pursuant to Section 3-1A.a of the Boston Zoning Code (the "Code"), a development plan must "set forth the proposed location and appearance of structures, open spaces and landscaping, proposed uses of the area, densities, proposed traffic circulation, parking and loading facilities, access to public transportation, [and] proposed dimensions of structures" (collectively, the "Development Plan Criteria").

Similarly, Sections 26A-3 and 26B-3 of the Code establish requirements for a development impact project, and Sections 26A-2.2 and 26B-2.2 require that a development impact project plan contain the same information as a development plan. In addition thereto, a development impact project plan must also set forth the projected number of employees.

The Development/DIP Plan submitted by the Applicant on November 9, 1989, as revised November 16, 1989 and November 30, 1989, represents a crucial stage in the planning process for the Project (as hereinafter defined). Without BRA approval of the Development/DIP Plan, the Applicant cannot proceed to the final stage at which the final plans and specifications are submitted to the BRA for final development review approval and certification as to consistency with the Development Plan. If the BRA determines that the Development/DIP Plan meets the Development Plan Criteria and that it "conforms to the general plan for the city as a whole and that nothing in such plan will be injurious to the

neighborhood or otherwise detrimental to the public welfare," the BRA may, after public hearing, approve the Development Plan. Section 26A-3 of the Code similarly provides that no Development Impact Project Plan may be approved by the BRA without making the same determinations as required for the Development Plan.

As noted above, even after the Development/DIP Plan is approved, the BRA review process will continue. All drawings and specifications will be subject to development review and approval by the BRA. In addition, in order to obtain a building permit, all final plans and specifications must be submitted to the BRA for a determination that they are consistent with the Development/DIP Plan. If the final plans and specifications are not consistent with the Development/DIP Plan, they cannot be approved unless the Development/DIP Plan is amended, after public notice and hearing.

2. THE PRESENT SITE IS SIGNIFICANTLY UNDERUTILIZED AND UNDERDEVELOPED

WHEREAS, the Site is located in the Fenway section of Boston and is bounded by Park Drive, Brookline Avenue, Fullerton Street and an MBTA right-of-way. The Site contains approximately 8.9 acres. (A more precise description of the Site is contained in the Development/DIP Plan.) At present, the existing Sears building located on the Site (the "Sears Building") is not in use. In addition the remainder of the Site is underdeveloped. Consequently, the Site returns little to the City in terms of tax revenue, and nothing in terms of employment or other public benefits.

The BRA finds that, if the Development/DIP Plan is not approved, the Site will continue as an underutilized area; and that the existing character of the Site will remain essentially unchanged; and the potential public benefits from the Site will not be fully realized.

3. THE APPLICANT'S DEVELOPMENT/DIP PLAN

WHEREAS, the Applicant's Development/DIP Plan consists of 7 pages of text plus attachments designated Exhibits A through H. The Applicant has also submitted the Application, which includes Exhibits A and B. In addition, the Applicant has submitted proposed forms of a Development Impact Project Agreement and a Cooperation Agreement (collectively, the "BRA Agreements"). After reviewing these forms of agreements, the BRA is satisfied that the BRA Agreements will ensure compliance with the Development/DIP Plan and the provision of the public benefits and mitigation measures referred to herein and, with such changes as may be made thereto by the Director of the BRA, the Director of the BRA will execute the BRA Agreements in a timely manner.

The BRA finds that the Applicant's Development/DIP Plan adequately sets forth the required elements or Development Plan Criteria of Sections 3-1A.a and 26A-2.2 and 26B-2.2 of the Code, including the proposed location and appearance of structures, open \ spaces and landscaping, proposed uses of the Site, densities, proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions of structures and projected number of employees.

4. THE PROJECT

WHEREAS, the Project contemplates a mixed use development planned to include primarily office, research and development, clinical, and retail uses, a parking garage and possible hotel uses. The Project will consist of four major buildings: the renovated Sears Building, a new building along Park Drive on the western corner of the Site (the "Park Drive Building"), a new building at the corner of Brookline Avenue and Fullerton Street (the "Brookline Avenue Building") and a new parking garage (the "Garage"). The Site will be enhanced by extensive landscaping and an improved pedestrian access and circulation system. The Park Drive Building will not exceed 120 feet in height or 223,000 square feet of gross floor area. The Brookline Avenue Building will not exceed 175 feet in height or 316,000 square feet of gross floor area. The Garage will not exceed 85 feet in height or 390,000 square feet of gross floor area. After renovation, the Sears Building will not exceed 200 feet in height or 907,000 square feet of gross floor area.

The BRA finds that the development of the Site is critically important to the revitalization of the Fenway area. The BRA further finds that, by maximizing the use of the presently underutilized Site, the Project will tie together the abutting \ neighborhoods and serve the diverse needs of the City and the distinctly different neighborhoods that surround the Site.

The BRA finds that, from a design standpoint, the Project is in harmony with the design philosophy of the Fenway area, that massing and setbacks are coordinated to relate to those of the surrounding \ neighborhoods and \ area, and that the buildings in the Project will have heights and gross floor areas not in excess of those permitted in the Development/DIP Plan.

5. THE PUBLIC REVIEW PROCESS AND EVOLUTION OF THE PROJECT

WHEREAS, the public has been included throughout the review process for the Project. Moreover, the Project has changed in response to the concerns voiced during the public review process. The proposed design is the result of a long and thorough review process. For example, through its evolution, the design and massing of the Project have been refined and reduced in scale. As originally proposed, a two-story roof addition was to be

constructed atop the base of the Sears Building. In addition, as originally proposed the Brookline Avenue Building was to be sixteen stories in height, the Park Drive Building was to be twelve stories in height and the Garage was to be eight stories in height. To reduce massing, the proposed addition to the Sears Building has been discarded, the Brookline Avenue Building has been reduced to thirteen stories, the Park Drive Building has been reduced to nine stories and the Garage has been reduced to six stories. The resulting design represents a commitment on the part of the Applicant to preserve open air and pedestrian and vehicular access. In addition, throughout the review process, the Project has evolved to include the provision of substantial community benefits as set forth in Resolution No. 7 below.

As part of the public review process, a Project Notification Form was filed on June 28, 1989 with the BRA and a combined Draft Project Impact Report and Draft Environmental Impact Report (the "DPIR/DEIR") was filed on September 29, 1989 with the BRA. An Environmental Notification Form was filed on March 15, 1989 with the Massachusetts Executive Office of Environmental Affairs ("the EOEA") and the DPIR/DEIR was filed on September 29, 1989 with the EOEA.

The BRA finds that as a result of the process of citizen involvement and public review, numerous changes have been made in the Project, demonstrating the Applicant's sensitivity to design, aesthetics, community concerns, environmental impacts and scale. The BRA further finds that, out of this public review, through the diligent and good faith cooperation of the Applicant, a better Project has evolved representing a culmination of the combined needs of the City, Boston businesses and the community at large.

6. THE PROJECT CONFORMS TO THE "GENERAL PLAN FOR THE CITY AS A WHOLE"

WHEREAS, in approving a development plan or a development impact project plan, the BRA must find "that such plan conforms to the general plan for the City as a whole." No specific "general plan" is referred to in Section 3-1A or 26A-3 or 26B-3 or elsewhere in the Code.

On March 11, 1965, the BRA adopted as the official master plan of the City for the next decade the "1965/1975 General Plan for the City of Boston and the Regional Core" (the "1965-1975 Plan"). In the intervening 22 years, no other formal City-wide plan has been adopted, although other plans and studies have been conducted, including the BRA study entitled "Planning for Boston's Next Decade of Development 1980-90." Neither the 1965-1975 Plan, nor any other single document frozen in time, has constituted "the general plan" for the City. Rather, "the general plan for the City as a whole" has been a continually evolving concept,

evidenced by development precedents and existing zoning ordinances.

The BRA finds that, by turning an underutilized site in the Fenway into a mixed-use development, the Project will convert an underdeveloped site into a physical and financial asset, and will provide economic stimulus to the neighborhoods and the larger community. The BRA further finds that by using materials and designs which are harmonious with the surrounding neighborhoods, the Project will strengthen the Fenway area without compromising the historic and architectural integrity of the area. The BRA further finds that, in spite of the passage of twenty-two years and Boston's greatly changed condition, the Project, as set forth in the Development/DIP Plan, is consistent with the development concepts contained in the 1965-1975 Plan.

7. THE PROJECT IS NOT "INJURIOUS TO THE NEIGHBORHOOD OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE"

WHEREAS, in order to approve the Development/DIP Plan, the BRA must find that "nothing in [a proposed Planned Development Area plan] will be injurious to the neighborhood or otherwise detrimental to the public welfare" pursuant to Section 3-1A.a of the Code. This standard has been interpreted by the Supreme Judicial Court in Manning v. Boston Redevelopment Authority, 400 Mass. 444 (1987). As the court noted, the planned development area provisions of the Code were intended to "establish a more flexible zoning law" in order to encourage well-planned and thoroughly reviewed large scale private development projects on underutilized sites. These provisions contemplate a balancing of relative benefits and burdens, acknowledging that such large scale development projects inevitably cause some burdens, but realizing that in a well-conceived and well-designed project such burdens are outweighed by public benefits generated by the Project.

Based upon its consistent administrative practice for nearly two decades, as well as upon the mandate of Manning, the BRA will balance a proposed plan's possible adverse effects and other matters claimed to be detrimental to the public welfare against the benefits to the neighborhood, the City, and the public. It will approve only those plans which "on balance, are not injurious to the neighborhood or otherwise detrimental to the public welfare, weighing all the benefits and burdens."

With respect to this Project, the balance is tipped heavily in favor of benefits to the neighborhood, the City and the public. As an integral part of the development review process, significant revisions have been made to the Project's design in order to mitigate adverse environmental and other impacts. For example, the proposed two-story addition to the Sears Building was discarded and, to reduce massing, the height of the proposed Brookline Avenue Building was reduced from sixteen stories to

thirteen stories, the height of the proposed Park Drive building was reduced from twelve stories to nine stories and the height of the proposed Garage was reduced from eight stories to six stories. In addition, through the public review process, the Applicant has included in the Project substantial community benefits designed to minimize any potential adverse impacts of the Project. These examples demonstrate a significant amount of mitigation included in the current Project design, which has resulted in a limited potential for negative impacts.

The Project does, however, provide numerous positive impacts. Set forth below are some of the benefits which will inure to the public as a result of the Project.

Public Benefits

A. Emerald Necklace Parcel

The Applicant shall cause title to the property currently owned by Sears and bounded by Park Drive, The Fenway, Brookline Avenue and By Pass Road (the "Emerald Necklace Parcel"), to be conveyed by Sears, Roebuck and Company ("Sears") directly to the City of Boston by no later than thirty days after the Park Completion Date (as defined hereinafter). The Authority agrees that either (i) the City of Boston will accept the conveyance of the Emerald Necklace Parcel, or (ii) the Authority will designate, prior to the date of acquisition of the Site by the Applicant and subject to the reasonable approval of the Applicant, a nonprofit organization, or an entity under the control of or established by the City or the Authority, which will accept the conveyance of the Emerald Necklace parcel, in which case the Applicant shall cause the Emerald Necklace parcel to be conveyed directly to such party. Subject to obtaining required zoning relief and other permits, the Authority agrees that the Emerald Necklace Parcel will thereafter be operated as a parking lot by an independent parking lot operator for a period of no more than two years, with the net income generated thereby, together with all interest earned thereon, to be devoted to construction of a public park estimated to cost \$1,000,000 (the "Park") on the Emerald Necklace Parcel in a manner to be approved by the Authority and the Applicant. The Authority shall cause the City to appoint an Advisory Committee to oversee planning for and design of development of the Park, such Advisory Committee to consist of representatives of the City, the Authority, the Developer, abutters to the Emerald Necklace Parcel, the Fenway community and open space advocacy groups.

Subject to obtaining necessary permits and approvals, the Applicant agrees to construct, or cause the construction of the Park. The Park shall be completed no later than July 1, 1992, subject to extensions for delays caused by circumstances beyond the reasonable control of the Applicant (as so extended, the "Park Completion Date"). No building permit shall be issued for any

portion of the Project after the Park Completion Date until completion of the Park. The Applicant will contribute the following amounts for development of the Park: (a) \$100,000 to be used solely to facilitate planning for and design of the Park and to be payable on or before January 31, 1990; (b) \$300,000 to be used solely for construction of the Park and to be payable on a dollar for dollar matching fund basis as funds from other sources are contributed to the Authority, or to such other party designated by the Authority, to be used solely for construction of the Park. In the event that the cost of construction of the Park exceeds \$1,000,000, the Applicant agrees to work with other sources and undertake good faith efforts to procure the additional sums required to complete the Park, but shall not be required to complete construction of any portion of the Park costing in excess of \$1,000,000 unless such additional sums required are procured.

Standard maintenance of the Park will be provided by the City of Boston Parks and Recreation Department. The Applicant agrees to provide additional maintenance services for the Park for a period commencing thirty days after notice from the Authority to the Applicant that construction of the Park is substantially complete and terminating on the earlier of fifty years thereafter or July 1, 2042. Maintenance services shall include and shall be limited to the following:

- (a) Sweep paths and under benches daily, wash hard surfaces with hose twice monthly.
- (b) Remove litter throughout the Park a minimum of once daily, or as needed to be completely litter free.
- (c) Provide appropriate professional horticultural attention to special plantings of perennials and/or deciduous shrubs. Such attention may include but is not limited to: bed cultivation, plant feeding, weeding, watering as needed, thinning, and mulching.
- (d) Turf irrigation by field hydrant as needed.
- (e) Trees shall be pruned and fed on an annual basis under the supervision of a certified arborist until they have grown to sufficient size to warrant a longer pruning/feeding /\ cycle as determined by the City of Boston Parks and Recreation Department.
- (f) Park furniture shall be repainted, cleaned, or refurbished on an annual basis, as needed.
- (g) Water fountain, if any, shall be kept in good working order from April 30 to October 31.

- (h) Irrigation system, anticipated to be a field hydrant, shall have water turned off for winter.

B. Employment Plan

It is anticipated that the Project will generate approximately 1,700 construction jobs and provide approximately 4,200 permanent jobs. In addition, the Applicant has commissioned a report from a labor market economist to assess the needs of the unemployed and underemployed residents of the Fenway area. The economist is working with area institutions and medical facilities in the Longwood Medical Area to identify occupations experiencing labor shortages. The report will conclude with a series of recommendations as to how those in need of work, through skills training and improved referral mechanisms, can improve their chances of obtaining jobs.

In addition, the Applicant will work with the Mayor's Office of Jobs and Community Services to make employment and training opportunities available to both Fenway employers and residents. The primary focus of this program will be on jobs available in the biomedical research field and on specific job categories presently unfilled in the educational and medical institutions located in the Fenway area. To this end, the Applicant will set aside not less than 2,000 square feet of indoor space in the Project for a job training, counseling and referral center to support training programs for the medical and biomedical research industries (the "Job Center"). The Applicant will secure the initial operators of the Job Center. The Applicant shall make available, or cause to be made available, the facilities to include the fixtures, furnishings and equipment required for the operation of the Job Center.

C. Increased Tax Revenues

It is anticipated that the Project will make significant economic contributions to the City by generating additional property tax revenues.

D. Development Impact Project Contribution

It is presently estimated that pursuant to Article 26A of the Code, the Applicant will contribute approximately \$6,730,000 in housing linkage payments or cause the creation of low and moderate income housing of an equivalent value. It is also anticipated that, pursuant to Article 26B of the Code, the Applicant will make jobs linkage contributions totalling approximately \$1,346,000.

E. Child Day Care Plan

The Applicant will set aside in the Project no less than 8,000 square feet of indoor space on a rent-free basis, for a child day care center for at least one hundred children to serve the needs of working parents employed at the Project ("Child Care Center"). The Applicant will secure the initial operators of the Child Care Center. The Applicant shall make available, or cause to be made available, the initial facilities to include the fixtures, furnishings and equipment required for the operation of the Child Care Center. The Applicant will work with the BRA on a Child Care Provision Agreement to be agreed upon and executed by the Applicant and the Boston Women's Commission, which plan shall set forth the proposed child care program and program design, the proposed child care population to be served by the Child Care Center and the proposed delivery date of such Child Care Center. Children of working parents from the Fenway area will be given priority placement in the Child Care Center. During the period prior to initial occupancy by tenants of the Project, the Applicant shall begin to solicit proposals in order to select a provider of child care services to the Project (the "Provider"). All such proposals and the Applicant's recommendations with respect to such proposals shall be made available to the community. The Applicant shall consider the comments and concerns of the community with respect to such proposals, but shall have the right to select the Provider. The quality of child day care services to be provided shall be the Applicant's first priority in selecting the Provider. The Applicant also agrees to make efforts to (a) choose a Provider who will maximize the affordability of child care services; (b) choose a Provider who will establish an after school program for children of parents employed at the Project; and (c) enter into a mutually satisfactory agreement with Wheelock College to provide for a training and employment program for child care providers, subject to required approvals, and provided that a portion of the jobs linkage funds contributed by the Applicant pursuant to Article 26B of the Code shall be made available for this purpose.

After occupancy by tenants of an area in excess of 25% of the gross floor area of Phase 1, no certificate of occupancy for additional tenant space shall be issued until the Applicant has satisfied its obligations relating to the Child Care Center.

F. Cooperation Agreement

The benefits described above are described in more detail in the Cooperation Agreement to be executed by the Applicant and the BRA.

G. Other Benefits

The Project is of critical importance to the physical and economic revitalization of the Fenway area. By developing the underutilized Site, the Project will enhance the neighborhood and the community at large by providing job opportunities, services and resources.

8. THE PROJECT SATISFIES THE CRITERIA FOR PDA EXCEPTIONS

WHEREAS, in order for the Board of Appeal of the City of Boston to grant certain exceptions with respect to the floor area ratio, setbacks, certain other dimensional features of the Project, uses, and other requirements in accordance with Section 6A-3 of the Code, it must find that (1) each requested exception is "in harmony with the general purpose and intent" of the Code; (2) each requested exception is in conformity with the Development/DIP Plan, and that the BRA has so certified; and (3) the Project complies with the Development Impact Project requirements of the Code.

The BRA finds that, for reasons set forth in the Resolutions numbered 5, 6 and 7 above, and based upon a review of the Applicant's Development/DIP Plan, the Application and the BRA Agreements, the above-stated criteria are satisfied as to each of the exceptions listed in the schedule entitled "Anticipated Zoning Exceptions" attached as Exhibit G to the Development/DIP Plan (the "Zoning Requests"). Pursuant to Section 6A-1 of the Code, such exceptions relate to work in a planned development area of not less than 5 acres and, therefore, shall not lapse and become null and void provided, within two years after the record of the Board of Appeal's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of Chapter 665 of the Acts of 1956, the Authority files with the Building Commissioner a certificate that work within the planned development area has commenced and is diligently proceeding, and provided further that the Authority does not thereafter file with the Building Commissioner a certificate that such work is not diligently proceeding.

9. CONCLUSION

WHEREAS, the BRA gave due and proper notice of a public hearing, to be held in the Board Room of the BRA on November 16, 1989, to consider the Development/DIP Plan and to determine the manner in which Sections 3-1A and 26A-3 and 26B-3 should be applied to the Development/DIP Plan. The public hearing was duly convened and held in all respects in accordance with law, and to the extent required by law, with a legal quorum present throughout the meeting. A legally sufficient number of members of the BRA voted in a proper manner and all other requirements and proceedings under law incident to the proper adoption or the

passage of said vote have been duly fulfilled, carried out and otherwise observed. At the public hearing, the BRA heard extensive testimony from a number of witnesses and closed the public hearing and the public record on this Application on November 30, 1989.

Based on all this evidence, the BRA finds and concludes that the urban design elements of the Project reflect the needs of the Fenway, while respecting the public goals and guidelines established for development in Boston and that the Project will aid the City financially by generating jobs, by providing back office space and by providing Boston with a new source of real estate tax revenues and linkage funds.

Based on all the evidence, the BRA further finds and concludes that the Project's Development/DIP Plan satisfies the Development Plan Criteria and otherwise complies with Section 3-1A and Articles 26A and 26B of the Code.

Based on all the evidence, the BRA further finds and concludes that the Project's Development/DIP Plan "conforms to the general plan for the City as a whole."

Based on all the evidence, the BRA weighs this Project's public benefits against the combined detriments of this Project and further finds and concludes that the Development/DIP Plan is not "injurious to the neighborhood or otherwise detrimental to the public welfare."

Based on all the evidence, the BRA finds that the exceptions listed in the Zoning Requests satisfy all of the criteria of the Code.

10. RESOLVES

NOW THEREFORE be it resolved by the Authority

That in connection with the Development Plan and Development Impact Project Plan for Planned Development Area No. 36 (the "Development/DIP Plan") presented at a public hearing duly held at the offices of the Boston Redevelopment Authority (the "Authority") on Thursday, November 16, 1989, and after consideration of (i) evidence presented at, and in connection with, the hearing, and in connection with the proposed project described in the Development/DIP Plan, (ii) matters discussed in a memorandum dated November 16, 1989, revised November 30, 1989, from the Authority Staff to the Authority and Stephen Coyle, and (iii) the findings of the Authority set forth above, which evidence, memorandum and findings are incorporated herein by reference, the Authority finds that (1) the Development/DIP Plan conforms to the general plan for the city as a whole; (2) nothing in the Development/DIP Plan

will be injurious to the neighborhood or otherwise detrimental to the public welfare; and (3) the Development/DIP Plan does adequately and sufficiently satisfy all other criteria and specifications for a development plan and for a development impact project plan as set forth in the Code; and further

That the form and substance of the Development/DIP Plan, and the procedures employed in reviewing and approving the Development/DIP Plan, conform with the requirements of the Code as applied to a development plan for a planned development area under Section 3-1A of the Code and a development impact project plan under Articles 26A and 26B of the Code; and further

That the Authority hereby waives any procedural requirements of the Authority's "Zoning Procedures for the Master Plan/PDA" dated March 19, 1986 with which the application submitted by the Applicant, for a planned development area subdistrict designation for the parcel of land which is the subject of the Development/DIP Plan, is not in conformity, and for which the review and approval procedures undertaken in connection with such application were not in conformity; and further

That pursuant to the provisions of Section 3-1A and Articles 26A and 26B of the Boston Zoning Code (the "Code"), the Authority hereby approves the Development/DIP Plan. The Development/DIP Plan is embodied in a written document entitled "Development Plan and Development Impact Project Plan for Planned Development Area No. 36", dated November 16, 1989, revised November 30, 1989, consisting of 7 pages of text plus attachments designated Exhibits A through H, and is attached hereto as Exhibit 1. The Development/DIP Plan shall be on file at the office of the Assistant Director for Neighborhood Planning and Zoning of the Authority; and further

That the Authority hereby authorizes the Director of the Authority to petition the Zoning Commission of the City of Boston (the "Commission") for a planned development area subdistrict designation for the parcel of land which is the subject of the Development/DIP Plan (the "Site"), and to recommend to the Commission that it approve such petition, the Development/DIP Plan pursuant to Section 3-1A of the Code; and further

That the Authority hereby approves the proposed forms of Development Impact Project Agreement and Cooperation Agreement (collectively, the "Related Agreements") in substantially the forms attached hereto as Exhibits 2 and 3, respectively, and the Authority hereby authorizes and directs

the Director of the Authority to execute and deliver in the name of and on behalf of the Authority the Related Agreements, with such changes as he, in his discretion, shall determine to be necessary or desirable, his execution and delivery of any of the foregoing or the taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder. The Related Agreements shall be on file in the office of the Authority; and further

That pursuant to Section 6A-2 of the Code, the Authority hereby authorizes the Director of the Authority to recommend to the Board of Appeal approval of the proposed zoning exceptions set forth in the document entitled "Anticipated Zoning Exceptions" and attached to the Development/DIP Plan as Exhibit G, with such changes as the Director of the Authority, in his discretion, shall determine to be necessary or desirable, his taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder; which approval of such exceptions is recommended by the Authority provided that the Commission will have adopted a Map Amendment designating the land involved as an M-2-D and a B-2-D zoning district. The Authority hereby authorizes the Director of the Authority to certify to the Commission and the Board of Appeal that said exceptions are in conformity with the Development/DIP Plan. Pursuant to Section 6A-1 of the Code, such exceptions relate to work in a planned development area of not less than 5 acres and, therefore, shall not lapse and become null and void provided, within two years after the record of the Board of Appeal's proceedings pertaining thereto is filed with the Building Commissioner pursuant to Section 8 of Chapter 665 of the Acts of 1956, the Authority files with the Building Commissioner a certificate that work within the planned development area has commenced and is diligently proceeding, and provided further that the Authority does not thereafter file with the Building Commissioner a certificate that such work is not diligently proceeding; and further

That pursuant to Section 7-2 of the Code, the Authority hereby recommends to the Board of Appeal approval of the variances and conditional use permits requested in connection with a petition to be brought by Olmsted Plaza Associates or its nominee for the development by the Applicant of a multi-level parking garage containing approximately 440 to 500 parking spaces on the property on Van Ness Street bounded by Van Ness Street, Yawkey Way, a passageway and land now or formerly of Harvard Community Health Plan, more particularly described in Exhibit 5 attached hereto (the "Van Ness Property"), which the Director of the Authority, in his discretion, shall determine to be necessary or desirable, his taking of any such action to be conclusive evidence of his

determination and of the authority granted to him hereunder; which approval of such variances and conditional use permits is recommended by the Authority.

That the Authority hereby approves the schematic design for the renovation of the existing Sears building on the Site, as such schematic design is set forth in the Schematic Design Submission for the Site dated September 15, 1989 prepared by Notter Finegold + Alexander Inc and submitted to the Authority on October 16, 1989 (the "Schematic Design Submission"). The Authority also approves the height and gross floor area, and the general footprint, envelope and location proposed for the multi-story parking garage (the "Garage") and two additional multi-story buildings to be located along Brookline Avenue (the "Brookline Avenue Building") and Park Drive (the "Park Drive Building"), as set forth in the Olmsted Plaza Design Parameters for the Park Drive Building, the Brookline Avenue Building and the Garage dated November 16, 1989 (the "Design Parameters"), a copy of which is attached hereto as Exhibit 4. The Authority agrees that it will not withhold approval of future design submissions with regard to the Site because of the height, gross floor area, and the general footprint, envelope and location proposed for the Garage, the Brookline Avenue Building and the Park Drive Building so long as the same are consistent with the Design Parameters; and further

That the Authority hereby authorizes and directs the Director of the Authority to execute and deliver in the name of and on behalf of the Authority all agreements and documents incidental to the Development/DIP Plan, including, without limitation, all agreements and documents relating to the development by the Applicant of the Van Ness property, such agreements and documents to be on such terms and conditions as the Director deems appropriate and in the best interests of the Authority, his execution and delivery of such agreements or documents or the taking of any such action to be conclusive evidence of his determination and of the authority granted to him hereunder. Any such agreements and documents shall be on file in the office of the Authority; and further

That the Authority hereby authorizes the Director to certify in the name of the Authority that the plans to be submitted to the Commissioner of the City of Boston Inspectional Services Department in connection with the Development/DIP Plan are in conformity with the Development/DIP Plan, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder; and further

That, conditioned upon execution of a Transportation Access Plan with the Boston Transportation Department, and a Boston Resident Construction Employment Plan, a Memorandum of Understanding and a First Source Agreement with the Mayor's Office of Jobs and Community Services, the Authority hereby authorizes the Director of the Authority to certify to the Commissioner of the City of Boston Inspectional Services Department that the Project complies with the Development Review Requirements of the Code, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder; and further

That, the Authority hereby authorizes the Director of the Authority to certify to the Building Commissioner pursuant to Section 6A-1 of the Code that work within the planned development area has commenced and is diligently proceeding, his certification of such to be conclusive evidence of his determination and of the authority granted to him hereunder.

MEMORANDUM

Taken under advisement November 16, 1989
November 30, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: PAMELA WESSLING, ASSISTANT DIRECTOR FOR URBAN DESIGN
AND DEVELOPMENT,
RICHARD GARVER, ASSISTANT DIRECTOR FOR SPECIAL PROJECTS
DON KLABIN, SENIOR PROJECT MANAGER
GERRY KAVANAUGH, DIRECTOR OF INSTITUTIONAL PLANNING

SUBJECT: DEVELOPMENT PLAN AND DEVELOPMENT IMPACT PROJECT PLAN
FOR OLMSTED PLAZA

EXECUTIVE

SUMMARY: This memorandum requests that with regard to a proposal to redevelop the Sears Building in the Fenway area and to construct a mixed-use project known as Olmsted Plaza, the Boston Redevelopment Authority (1) make findings, required for the approval of, and approve, a Development Impact Project Plan and Development Plan for Olmsted Plaza; and (2) authorize the Director to take all actions and to execute all documents deemed necessary and appropriate for the development of Olmsted Plaza. Specific actions are subject to the terms and conditions outlined in the attached resolution.

Development Program

Olmsted Plaza Associates, a Massachusetts general partnership, the partners of which are JMB/Olmsted Limited Partnership and Macomber Olmsted Plaza Associates Limited Partnership, requests approval of a Development Impact Project Plan and Planned Development Area (PDA) Development Plan for Olmsted Plaza, a proposed mixed-use development of approximately 1,836,000 square feet located in the Fenway, Audubon Circle and Kenmore neighborhoods. The proposal involves four structures, including the Sears building renovated to house office and research and development uses, a new building along Park Drive to house similar uses, a new building along Brookline Avenue to house office or hotel uses, and a new parking garage located in the rear of the site. The heights of these new buildings range from 68 feet for the parapet of the garage to 159 feet for the parapet of the Brookline Avenue building.

Lisaan

Corrected

Bd. Moore

(vote)

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November 30, 1989

The developer anticipates constructing the proposed project in two phases. Construction of Phase I, which includes the Sears Building renovation and the parking garage, will begin in the first half of 1990 and will be substantially complete in late 1991. Construction of subsequent phases, which includes the new Park Drive and Brookline Avenue Buildings, would be carried out during the period 1992-1996.

Project Update: Concerns and Responses since November 16, 1989

On November 16, 1989, the Boston Redevelopment Authority ("BRA") held a public hearing on Olmsted Plaza. At that hearing, the Board voted to take the project under advisement and to continue the public hearing until November 23, 1989, thereby allowing additional time for the public to comment and for the developer to proponent to address the outstanding community concerns (letters referring to Olmsted Plaza are attached in Tab 9). More specifically, these comments raised by the community were related to the affordable housing program, mitigation of transportation impacts, area-wide master planning, and design.

Affordable Housing Response

Community representatives have asked that housing linkage generated by the Olmsted Plaza project be utilized for projects within the Fenway neighborhood. Since November 16, 1989, the developer has clarified to the neighborhood that no longer than 120 days after approval of the Development Plan by the Zoning Commission, he will submit Housing Creation Proposals for two projects in the Fenway neighborhood: the development of affordable housing on the Peterborough parking lot currently owned by Sears, and the Single Room Occupancy development currently being sought by Boston University. These housing creation proposals will establish that, insofar as the eventual linkage requirements of these projects are less than standard Neighborhood Housing Trust allocations for such projects, the City and the community will make additional housing creation applications, with first priority to the second phase of Boston University's disposition at Audubon Circle, which is a Limited Equity Cooperative development.

Further, the developer has agreed to prepay his housing linkage obligation for Phase I of the project within 90 days of the issuance of a building permit for Phase I. The housing linkage obligation for future phases of the project will be paid in accordance with Articles 26 and 26A.

In addition to these commitments, the developer will contribute to a housing fund the proceeds of operating the Peterborough Street site as a parking lot during the period prior to

November 30, 1989

construction of affordable housing on the Peterborough Street site. These proceeds will be distributed to neighborhood affordable housing needs according to a plan to be established by the City and the neighborhood.

Finally, Boston University is disposing of seven properties in the Audubon Circle area. The Audubon Circle community has requested clarity in the schedule of the divestiture of twelve remaining properties owned by Boston University in their neighborhood. Pursuant to a Cooperation Agreement between Boston University and the City of Boston executed in 1984, these properties are to be disposed of for a mix of affordable and market units. To reaffirm the provisions of this Cooperation Agreement, the BRA and the University will work over the next 60 days to create a schedule for the disposition of the balance of the properties. It is our intent to incorporate this schedule into appropriate Boston University agreements.

Transportation Mitigation Response

The community has requested that the proponent further define his proposed measures to mitigate the project's transportation impacts for all phases of development. Over the past two weeks, the proponent has worked with the community and the Boston Transportation Department and has agreed that, in addition to his \$500,000 Phase I contribution, he will contribute 50 cents per square foot for each square foot developed in subsequent buildings. These funds will be used to further mitigate the transportation impacts of the Olmsted Plaza project. In addition, the developer has agreed to monitor the impacts of the Phase I mitigation measures, complete a revised Transportation Access Plan and execute a revised Transportation Access Plan Agreement prior to the construction of Phase II buildings. The review of this revised plan will follow the structure of the Article 31 Development Review Requirements process, thereby ensuring adequate community participation.

Area-wide Master Plan Response

Residents of neighborhoods surrounding the project site have expressed concerns about development pressures on Boylston Street in the West Fens. To this end, we have proposed to carry out a planning and zoning study of Boylston Street, with the goal of interim controls by May, 1990. The Mayor's Office of Neighborhood Services has agreed to schedule a public meeting in the Fenway neighborhood to begin the community process of rezoning.

November 30, 1989

Design Response

Residents of the neighborhood to the west of the project have asked for modifications to the design of the Park Drive Building so as to minimize environmental and design impacts of the project to their neighborhood. In response to this concern, the proponent has agreed to modify the design of the building, removing approximately 12,000 square feet of floor space through the introduction of upper level setbacks which both mitigate shadow impacts and create a smoother transition from the smaller scale residential buildings to the west to the Sears Building to the east.

In addition, the Brookline Avenue building and all other buildings on the site will be subject to continuing design review.

Site Description

Olmsted Plaza will be located within a 387,620 square foot (8.9 acre) parcel of land in the Fenway area of Boston, bounded generally by Park Drive, Brookline Avenue, Fullerton Street and an MBTA right-of-way. A site plan is attached as Exhibit A and is further described in the Development Plan.

Open Spaces and Pedestrian Circulation

Within the project site, the Olmsted Plaza proposal features a campus-like series of open spaces including a pedestrian plaza on Brookline Avenue and a landscaped area on Park Drive. Pedestrian paths include routes through the site between the existing and proposed buildings, and alongside the MBTA right-of-way. A grade-level pedestrian mall through the renovated Sears Building enhances access between the MBTA Fenway Park stop and the residential neighborhood to the east.

Community Process

The Planned Development Area proposal is the result of a comprehensive community review process engaging several community groups, including the Fenway Community Development Corporation, Audubon Circle Neighborhood Association, Kenmore Association, Boston-Fenway Program, Inc., and others. Through weekly community meetings with representatives from these organizations and others, and through the construct of the Article 31 review process, through which the proponent has voluntarily agreed to have the proposal reviewed, the community has been able to actively and iteratively review and comment on the development proposal.

November 30, 1989

Twelve months of community review have caused significant changes to the project as compared to when it was originally submitted. These changes include reductions in building height, revisions of building massing and increases in many public benefits.

Public Benefits

Concomitant with the review of the development proposal itself, the community has scrutinized the public benefits and negotiated a number of public benefits which make the Olmsted Plaza proposal unique.

Return of the "Missing Link" to the Emerald Necklace

The Olmsted Plaza proposal contains a commitment to cause the completion of a park on the site of the present Sears parking lot by June 30, 1992. Toward that commitment the property will be conveyed to the City at no cost. The proponent will make \$100,000 available for project design. The design process will be carried out under the direction of the City's Parks and Recreation Department, in consultation with an advisory committee formed by the department. Park construction is estimated to cost \$1 million. Funding sources for construction will include the revenue from interim parking use of the lot, to be discontinued when the site is needed for construction. The proponent has committed to contribute directly to construction and to obtain sufficient additional funds to assure a completed, City owned park by the summer of Olmsted Plaza's occupancy, and not later than June 30, 1992. The proponent has also agreed to maintain the park for fifty years, in accordance with a work schedule agreed to by the Parks and Recreation Department.

Economic and Fiscal Benefits

With a total development cost of approximately three hundred twenty-five million dollars (\$325,000,000), the Olmsted Plaza proposal represents a significant investment in research and development space in Boston. Such an investment is critical to the City in ensuring that Boston maintain a diverse economy capable of sustained growth in several sectors.

In addition, the Olmsted Plaza project generates a significant increase in both City and State taxes. As proposed, Olmsted Plaza would result in the generation of approximately \$3 million in additional annual real estate property taxes. Additional revenue would be generated for the State in the form of sales and hotel taxes.

November 30, 1989

Employment Benefits

The employment benefits that the Olmsted Plaza proposal brings to Boston are extensive. Approximately 1,700 person-years of construction work will be generated by the project. The developer has agreed to comply with the City's hiring policies and will codify this through the execution of a Residents Construction Employment Plan Agreement with the Mayor's Office of Jobs and Community Services (OJCS), as stated in the Cooperation Agreement.

Olmsted Plaza also brings benefits in the form of permanent jobs. When completed, the project will house approximately 4,200 permanent jobs. The developer has agreed to comply with the City's hiring policies and will codify this through the execution of a First Source Agreement with OJCS, as stated in the Cooperation Agreement.

In addition, the facility will provide at a minimum a 100-slot, 8,000 square foot child care facility, rent-free and fully furnished, to serve those employed in the facility who may otherwise not be able to work there. Employees who are local residents will be given priority placement.

Finally, the proponents' commitment to the benefit of employment is exemplified by a jobs study which was included in the Draft Project Impact Report. This study has served as an invaluable resource in shaping programs to be funded by the \$1,358,000 of jobs linkage monies that this proposal generates. While these programs are not finalized, the proponent has been working with OJCS staff to create jobs training programs in the areas of health, medical research, and child care occupations, and to provide a 2,000 square foot training facility.

Transportation Impacts

The developer has submitted a Transportation Access Plan which studied traffic, transit and pedestrian conditions over an extensive area. Twenty-six intersections were analyzed, some as distant as the Boston University Bridge and the intersection of Riverway/Brookline Avenue. Measures which would improve traffic operations were proposed for all but the four intersections which did not require improvements. The Boston Transportation Department has reviewed these proposals, reviewed its findings with the Metropolitan District Commission, which owns some of the roadways, and is prepared to allocate the \$500,000 first phase contribution to selected intersection improvements. At this time the developer has agreed to provide \$50,000 to the City as a portion of the funding for a comprehensive Kenmore Square/Fenway Transportation study as well.

November 30, 1989

Further, the proponent has also agreed to initiate a commuter mobility program for the project. In order to assure that the transportation impacts of the project are adequately managed, the City will require through its Transportation Access Plan Agreement that the developer monitor traffic generation and mode split annually from the date of occupancy.

As a measure to address not only the design aspects of the project but its traffic impacts, the developer has been required to limit his on-site parking to the 1155 spaces required for the first phase development. Parking for subsequent buildings would be located on a Sears owned parcel across Brookline Avenue, which would disperse the impacts of project traffic.

At the point that the developer initiates approval of either the Park Drive or the Brookline Avenue building, a revised and updated Transportation Access Plan will be required. The Plan will report on the monitoring results, the current operation of area intersections and the effectiveness of mitigation measures. Further, the plan will suggest additional improvements to the transportation network that are required, which the developer will fund from the remaining \$300,000 of funds that he has contributed.

Development Review Requirements

On June 28, 1989, the proponent submitted a Project Notification Form to the Boston Redevelopment Authority and an Environmental Notification Form to MEPA. On September 28, 1989, the Boston Redevelopment Authority issued a Scoping Determination for the project.

On September 29, 1989, the proponent submitted to the Boston Redevelopment Authority a Draft Project Impact Report (DPIR) describing the impacts of the proposed project. On that same day the proponent submitted to MEPA a Draft Environmental Impact Report.

On November 13, 1989, the Boston Redevelopment Authority staff completed its review of the DPIR and issued a Preliminary Adequacy Determination after a 30-day public comment period. As stated in the Cooperation Agreement, Olmsted Plaza Associates will take all practical measures to mitigate any potential damage to the environment identified in the Final Project Impact Report.

Planned Development Area/Development Impact Project Requirements

Olmsted Plaza Associates has requested several actions from the BRA Board necessary for the project to proceed. Because the developer is seeking a PDA zoning designation for the site, a

November 30, 1989

development plan is required to be submitted and approved by the BRA Board. In addition, Articles 26, 26A and 26B of the Boston Zoning Code require that the Board approve a Development Impact Project Plan which outlines the housing linkage and jobs linkage obligations of Olmsted Plaza Associates. These two documents, the Development Plan and the Development Impact Project Plan, are combined into a single document and attached in Tab 5 to this memorandum for the Board's review.

A Development Impact Project Agreement (in connection with the Development Impact Project Plan) and a Cooperation Agreement (in connection with the Development Plan) are also appended in Tabs 6 and 7, respectively.

Conclusion

Attached to this memorandum are documents regarding the application of Olmsted Plaza Associates for Planned Development Area and Development Impact Project approval for Olmsted Plaza.

An appropriate vote follows:

VOTED: That the Authority hereby adopts the attached Resolution entitled "Resolutions of the Boston Redevelopment Authority Regarding Olmsted Plaza Development Plan and Development Impact Project Plan" and dated November 30, 1989, consisting of 15 pages, and the Authority specifically adopts the findings incorporated therein, and specifically adopts the resolves that are outlined in the last 5 pages of said Resolution.

